



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/759,627	01/16/2004	Raymond Findleton	P68.2-11447-US01	1231

490 7590 04/16/2007
VIDAS, ARRETT & STEINKRAUS, P.A.
6109 BLUE CIRCLE DRIVE
SUITE 2000
MINNETONKA, MN 55343-9185

EXAMINER

CASTELLANO, STEPHEN J

ART UNIT	PAPER NUMBER
----------	--------------

3781

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	04/16/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/759,627

Applicant(s)

FINDLETON, RAYMOND

Examiner

Stephen J. Castellano

Art Unit

3781

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 February 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date. _____ | 6) <input type="checkbox"/> Other: _____ |

Art Unit: 3781

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-23 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 recites the limitation "said gripping means" in line 8. There is insufficient antecedent basis for this limitation in the claim. Claims 2, 5-9, 11, 14, 20, 22 and 23 are similarly indefinite because there is no antecedent basis for "said gripping means."

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-15 and 18-23 are rejected under 35 U.S.C. 102(b) as being anticipated by Clark (D401704).

Clark discloses a container for holding paint comprising a base, a continuous wall, gripping members (area contacted by the left hand in Fig. 2) formed in the wall on opposite sides, a dipping section adjacent to the gripping members and extending below the annular shoulder and an inclined tongue portion (that portion of the vertical wall extending upwardly of the wiping bar and annular shoulder and below the upper lip and flange surrounding the open

Art Unit: 3781

top, opposite to the wiping bar) extending upwardly and outwardly from the wall adjacent to the dipping section.

Re claims 2-4, since the gripping member is vertically aligned with the center of gravity of a filled container, the torque will be negligible and no more than 0.6 ft-lb.

Re claim 5, the base length extends from top to bottom in Fig. 3 and 4 and the gripping means extends at least 50 % of the length.

Re claim 11, Fig. 1 and 2 disclose ridges on the gripping members.

Re claim 12 and 13, the tongue portion width can be selected to be substantially equal to dipping section width and within the range so that the dipping section width is in the range of 85% - 115% of the tongue portion width.

Re claim 23, the arcuate section is the curve as one progresses from the ceiling of the recess forming the gripping member to the sidewall adjacent to the end opposite to the wiping bar for the gripping member on the right side of Fig. 2, the left side gripping member as shown in Fig. 2 has the arcuate section adjacent to the wiping bar.

Claims 1-2, 8-11, 12-21 are rejected under 35 U.S.C. 102(b) as being anticipated by Cooke et al. (Cooke)(D248335).

This rejection is explained in the previous Office action mailed November 3, 2006.

Claims 1-4 are rejected under 35 U.S.C. 102(e) as being anticipated by Bebak (6419106).

This rejection is explained in the previous Office action mailed November 3, 2006.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person

Art Unit: 3781

having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 16 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Clark.

Re claim 16, it would have been obvious to select the size of the tongue portion such that the tongue accommodates a three inch brush to allow painting with a three inch or larger brush.

Re claim 17, it would have been obvious to extend the tongue portion upward at a 45 degree angle as motivated by a portion that drains fast enough yet allows a comfortable angle for wiping the brush.

Claims 2-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cooke.

This rejection is explained in the previous Office action mailed November 3, 2006.

Claims 5-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bebak in view of Pereira Da Silva (6006901).

This rejection is explained in the previous Office action mailed November 3, 2006.

Applicant's arguments filed February 12, 2007 have been fully considered but they are not persuasive. Applicant agrees in theory (see page 8, third paragraph, fourth sentence) that the two tabs are graspable by one hand but states that the torque developed when the container is loaded with paint would twist the container from a user's grasp. The examiner agrees with applicant that the Cooke container can be grasped by the gripping members in a single hand. Claim 1 is not limited to a container that can be grasped by the gripping members in a single hand. Further, there is no definition of the torque in claim 1 as claims 2-4 present torque limitations.

Art Unit: 3781

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a).

Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen J. Castellano whose telephone number is 571-272-4535.

The examiner can normally be reached on increased flexibility plan (IFP).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony D. Stashick can be reached on 571-272-4561. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3781

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Stephen J. Castellano
Primary Examiner
Art Unit 3781

sjc